

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

TAVIUS L. SMITH,

Plaintiff,

v. // CIVIL ACTION NO. 1:15CV174  
(Judge Keeley)

CAPITAL ONE/YAMAHA  
and HSBC BANK,

Defendants.

ORDER ADOPTING REPORT AND RECOMMENDATION [DKT. NO. 23]

On September 25, 2015, the pro se plaintiff, Tavius L. Smith ("Smith"), filed a complaint in the Circuit Court of Harrison County, West Virginia (dkt. no. 1-1). Smith's complaint asserted claims against Capital One/Yamaha<sup>1</sup> ("Capital One") and HSBC Bank<sup>2</sup> ("HSBC") for violations of the Fair Debt Collection Practices Act ("FDCPA"), 15 U.S.C. §§ 1692, et seq. Specifically, Smith claimed that the defendants maintained open credit accounts in his name, showing a past due balance of \$12,590, which he argues he did not authorize or incur. On September 25, 2015, Capital One, with the consent of HSBC, removed to this Court based on federal question jurisdiction pursuant to 28 U.S.C. § 1331. The Court then referred this matter to the Honorable Michael J. Aloï, United States

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<sup>1</sup>In his complaint, Smith incorrectly labeled defendant Capital One, N.A., as "Capital One/Yamaha."

<sup>2</sup>In his complaint, Smith incorrectly labeled defendant HSBC Card Services, Inc., as "HSBC Bank."

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Magistrate Judge, for initial screening and a Report and Recommendation ("R&R") in accordance with LR PL P 2.

On September 25, 2015, Smith filed separate motions for default judgment against both Capital One (dkt. no. 15) and HSBC (dkt. no. 18). On the same date, Smith also filed two separate motions for summary judgment, both against Capital One (dkt. nos. 16 and 17). Capital One and HSBC responded to Smith's motions and countered by filing their own separate motions to dismiss Smith's claims against them (dkt. nos. 9 and 11).

On December 15, 2015, Magistrate Judge Aloï issued his R&R (dkt. no. 23), in which he concluded that Smith had failed to allege facts establishing that either defendant was a debt collector under the FDCPA, an essential element of such a claim. Accordingly, pursuant to Fed. R. Civ. P. 8, Magistrate Judge Aloï recommended that the Court grant both motions to dismiss filed by Capital One and HSBC, and dismiss Smith's complaint with prejudice. He concluded by recommending that Smith's motions for default judgment and for summary judgment be terminated as moot.

The R&R specifically warned Smith that his failure to object to the recommendation would result in the waiver of any appellate rights he might otherwise have on this issue. Id. at 22. The

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parties did not file any objections.<sup>3</sup> Consequently, finding no clear error, the Court:

- **ADOPTS** the Report and Recommendation in its entirety (dkt. no. 23);
- **GRANTS** Capital One's motion to dismiss (dkt. no. 9);
- **GRANTS** HSBC's motion to dismiss (dkt. no. 11);
- **DENIES as MOOT** Smith's motions for default judgment (dkt. nos. 15 and 18);
- **DENIES as MOOT** Smith's motions for summary judgment (dkt. nos. 16 and 17); and
- **DISMISSES** Smith's complaint **WITH PREJUDICE**.

It is so **ORDERED**.

Pursuant to Fed. R. Civ. P. 58, the Court **DIRECTS** the Clerk of Court to enter a separate judgment order and to transmit copies of both orders to counsel of record and to the pro se petitioner, certified mail, return receipt requested.

Dated: May 26, 2016.

/s/ Irene M. Keeley  
IRENE M. KEELEY

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<sup>3</sup> The failure to object to the Report and Recommendation not only waives the appellate rights in this matter, but also relieves the Court of any obligation to conduct a de novo review of the issue presented. See Thomas v. Arn, 474 U.S. 140, 148-153 (1985); Wells v. Shriners Hosp., 109 F.3d 198, 199-200 (4th Cir. 1997).

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UNITED STATES DISTRICT JUDGE